

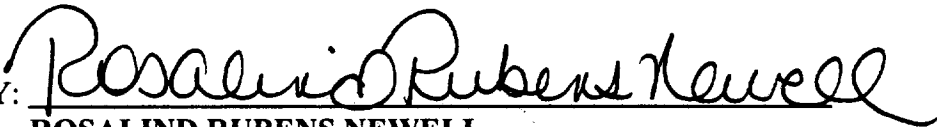
Entered - 05/08/01 - sb
CL01L0292 - DIANNE C. MITCHELL

01-R-1365

**CLAIM OF: ESTATE OF THOMAS B. WEST, SR.,
through its attorney,
Richard N. Hubert
191 Peachtree Street, NE
Ninth Floor
Atlanta, Georgia 30303-1747**

For damages alleged to have been sustained as a result of property damage due to the construction of a combined sewer overflow facility during June, 2000 at property bounded by Lester Avenue, Avondale Avenue and East Confederate Avenue.

THIS ADVERSED REPORT IS APPROVED

BY: 
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 01L0292

Date: August 7, 2001

Claimant /Victim ESTATE OF THOMAS B. WEST, SR.
BY: (Atty) Richard N. Hurbert
Address: 191 Peachtree Street, NE, Ninth Floor, Atlanta, Georgia 30303-1747
Subrogation: Claim for Property damage \$ Bodily Injury \$ Not Stated
Date of Notice: 05/07/01 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence June, 2000 Place: Property bounded by Lester Avenue, Avondale Avenue & E. Confederate Avenue
Department Public Works Division: Sewer Operations
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges its property has been damaged due to construction of a combined sewer overflow facility. The claimant has filed a lawsuit to resolve the issues raised in its claim.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

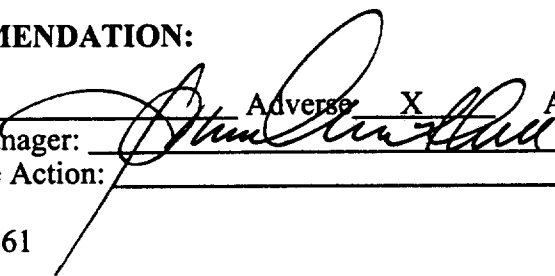
BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,


INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager:  Concur/date 080701
Committee Action: Council Action

FORM 23-61

CHAMBERLAIN, HRDLICKA, WHITE, WILLIAMS & MARTIN

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

191 PEACHTREE STREET, N.E. - NINTH FLOOR

ATLANTA, GEORGIA 30303-1747

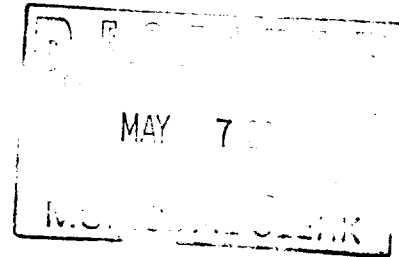
(404) 659-1410 (800) 800-0745

FAX (404) 659-1852

DIRECT DIAL NO. (404) 658-5481
richard.hubert@chamberlainlaw.com

RICHARD N. HUBERT
SHAREHOLDER

M. J. Hall
05/08/01
HOUSTON
ATLANTA
SAVANNAH



0110292-0107:27 RND

May 3, 2001

ENTERED - 5-8-01 - SB

0110292 - DIANNE MITCHELL

Via United States Mail Certified-Return Receipt Requested

The Honorable William C. Campbell
Mayor, City of Atlanta
City Hall, Suite 2400
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

The Honorable Members of the Atlanta City Council
Atlanta City Hall, Office of the Municipal Clerk
Suite 2700
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Dear Mayor Campbell and Members of the Council:

This firm presents the Estate of Thomas B. West, Sr. (the "Estate") in connection with property which the estate owns bounded by Lester Avenue, Avondale Avenue and East Confederate Avenue in the City of Atlanta (the "Property"). For purposes of discussion, we are attaching sketches of the Property.

It has recently come to the attention of the Estate that a combined sewer overflow ("CSO") facility has been constructed on the Property by the City of Atlanta. The Estate owns numerous properties, some of which are improved, and are managed by the Executor of the Estate. The Property however is unimproved and thus is not visited on a regular basis. The Estate is therefore without information as to when the CSO facility was placed on the Property.

In June of 2000, a representative of Archer-Western Contractors contacted Mr. Dan West, Executor for the Estate, seeking permission for ingress and egress on the Property for work being done on adjoining property. A visit to the Property in May of 2000 had revealed work in that area, which representatives of the Estate believed to be on adjoining property. Eventually, a lease agreement was executed with regard to the rights sought by the City's contractor, which lease stated that the Property was only to be used "as an entrance to a job being

The Honorable William C. Campbell, Mayor
and Members of the City of Council
April 27, 2001
Page 2

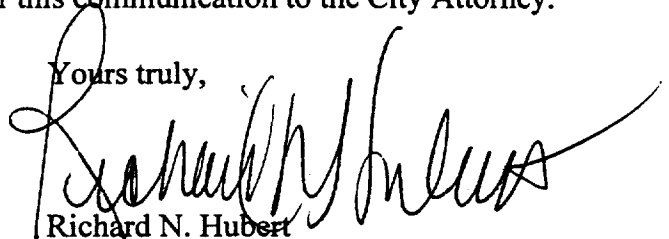
conducted by a lessee (for the City of Atlanta) and as a limited facility for storage of construction materials for lessee."

On or about February, 2001, Mr. West received a telephone call from an agent for the City of Atlanta, Mr. John Lavelle of Smith's Real Estate Services, who stated that the City had built a CSO facility on the Property without permission. The Estate expected, as a result of that telephone call, that negotiations would be commenced to resolve the trespass and taking of the Estate's Property in a manner acceptable to the Estate and the City; however, there have been no further communications from Mr. Lavelle or any other agent acting on behalf of the City.

This letter represents a formal demand by the Estate that the City of Atlanta, at its expense, remove the facility that it has placed on the Property and further that the Estate be compensated for the trespass and illegal use of the Property from the time construction commenced until such removal is completed. The City's failure to comply with this demand will result in legal action and the pursuit of all remedies available to the Estate, including a suit for trespass, inverse condemnation and a suit for ejectment.

This letter shall serve as a notice of claim and *ante litem* notice pursuant to O.C.G.A. §36-33-5. We would ask that you refer this communication to the City Attorney.

Yours truly,

A handwritten signature in black ink, appearing to read "Richard N. Hubert", written over a horizontal line.

Richard N. Hubert

RNH/cdt

Enclosures

cc: Dan West

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01- L-1365

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